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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/655,987	09/06/2000	Calvin B. Ward	54391	9378

7590                    06/02/2003

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[REDACTED] EXAMINER

DICUS, TAMRA

ART UNIT	PAPER NUMBER
1774	8

DATE MAILED: 06/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/655,987	WARD, CALVIN B.
	Examiner Tamra L. Dicus	Art Unit 1774

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 May 2003.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) 9-18 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8, 19-28 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

The 112 first and second paragraph rejections are withdrawn.

### ***Response to Amendment***

The 102 and 103 rejections are maintained for reasons of record, as recited in a prior Office Action, dated Dec. 10, 2002. In response to the new limitation, “within the boundaries of said cells”. The sheets have cells because they are nonwoven and have absorptive properties, and hence “cells for containing liquid within the boundaries of said cells” is taught.

### ***Response to Arguments***

In response to the “electrostatically” charged sheet. The Hiraoka reference teaches the same materials being subjected to electrical discharge, which is a functional equivalent to “electrostatically” charging. As per Applicant’s disclosure, the polymeric sheet simply has an electrical field applied to the sheet and as Applicant admits, “[electrostatically] charging such sheets are well known to the art”. Applicant appears to disregard this teaching of Hiraoka by stating Hiraoka passes a spark through a substrate to create a hole. Hence, Applicant’s argument is not persuasive. The 102b rejection is sustained.

In response to Babb not providing an electrostatically charged sheet as Applicant contests, Applicant’s argument is not persuasive. The Babb reference teaches coatings of polymers may be made via corona discharge (col. 13, line 55-col. 14, line 5) and electrostatically spraying (col. 20, line 63) among other coating methods listed. Corona discharge is applying electron beams (equivalent to electric field application as in disclosure) and Babb teaches electrical charges of 6 MeV up to 2000V at col. 13, lines 55-60. Hence, since Babb teaches electrical beams/spraying techniques are used for a polymeric sheet, the sheet itself is certainly

electrostatically charged. Furthermore, Applicant admits in the remarks that corona discharge applications in some cases leads to electrostatic charge. No distinction is seen.

1. In response to the combination of Barby, Hiraoka, and Riley, as discussed above, Hiraoka teaches subjecting electrical discharge to a polymeric sheet and hence teaches an electrostatically charged sheet. In response to applicant's argument that Hiraoka uses the electrostatically charged sheet for preventing condensation and not for protecting a surface, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious.

See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

2. In response to the motivation to combine Hiraoka to Barby, Barby teaches a sheet for absorbing liquid at col. 1, line 60-col. 2, line 10. Hiraoka is simply used to show electric charging a sheet is well known to produce an electrostatically charged sheet, reasoning is of no consequence.

3. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Applicant contests that Barby is directed to a specific class of moisture permeable substrates and that Hermann does not teach open cell foam that provides the same properties of Barby, namely, moisture permeability. The Applicant's contention is not persuasive. Hermann

is used to show a sheet may contain open-cells and since both Barby and Hermann teach nonwoven polymeric sheets, one skilled in the art would find it obvious to combine the teachings of Herman to Barby. The use of Barby is inconsequential. Barby teaches the same materials as Applicant and Hermann is applicable since open cell foam is taught by Hermann to the same material of Barby.

4. In response to applicant's argument that Riely's purpose is different than the use of the sheet of Barby, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). Riely is used to simply show that fibrous mats are known to be constructed from polymeric sheets. The Examiner does not have to show Riely to be "more useful" than Barby. Barby and Riely are combinable since both address polymeric sheets Riely teaches polymeric adjustments such as fibrous mats for increased absorption. No distinction is seen.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamra L. Dicus whose telephone number is (703) 305-3809. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m., alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia Kelly can be reached on (703) 308-0449. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-8329 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Tamra L. Dicus  
Examiner  
Art Unit 1774

May 27, 2003

CYNTHIA H. KELLY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

